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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,250	01/04/2002	William R. Cruz	12387	3320

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EXAMINER
HAVAN, THU THAO

ART UNIT	PAPER NUMBER
3691	

DATE MAILED: 12/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/035,250	CRUZ ET AL.
	Examiner	Art Unit	
	Thu Thao Havan	3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 September 2006</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,14,16,18,21-23,25-41,47,49,51,54-56 and 58-72* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,14,16,18,21-23,25-41,47,49,51,54-56 and 58-72* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *1/4/02* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

Detailed Action

Election/Restrictions

Applicant's election without traverse of claims 1-8, 14, 16, 18, 21-23, 25-41, 47,

49, 51, 54-56, and 58-72 in the reply filed on September 29, 2006 is acknowledged.

Claims 9-13, 15, 17, 19-20, 24, 42-46, 48, 50, 52-53, and 57 withdrawn from

further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected

group, there being no allowable generic or linking claim. Election was made **without**

traverse in the reply filed on September 29, 2006.

Drawings

The Examiner accepts the drawings filed on January 4, 2002.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims **1-8, 14, 16, 18, 21-23, 25-41, 47, 49, 51, 54-56,** and **58-72** are rejected

under 35 U.S.C. 103(a) as being unpatentable over Tertitski et al. (US 6,493,681) in view of

Li et al. (US 7,043,449).

Re claims **1, 35, 68,** and **71,** Tertitski teaches a method for automating trading

strategies on a distributed financial computer network (<u>col. 3, lines 10-25; col. 2, lines 11-</u>

<u>14</u>), said method comprising the steps of:

monitoring a data stream of market data from said distributed financial computer

network pursuant to a trading strategy, said data stream corresponding to market

conditions on said distributed financial computer network (<u>col. 3, line 65 to col. 4, line 8;</u>

<u>col. 2. lines 29-46 Tertitski discloses stock ticker symbol corresponding to a data stream</u>

<u>of market data. In that Tertitiski discloses the monitoring of a data when he discloses</u>

<u>an ability to quickly analyze the dynamic and stability of the best strategy</u>);

applying said trading strategy to said data stream of market data, said trading

strategy including at least one market trigger condition (<u>col. 1, line 58 to col. 2, line 46;</u>

<u>figs. 1-2 and 5; Tertitski applying strategy by calculating formulas and displaying in</u>

<u>matrix format</u>); and

upon occurrence of said at least one market trigger condition, automatically

generating an entry or exit order over said distributed financial computer network

pursuant to said trading strategy (<u>col. 2, lines 6-29; col. 5, lines 28-49; figs. 2 and 5;</u>

<u>Tertitski discloses the automatic selection/recommendation of the best strategy</u>).

However, Tertitski does not explicitly teach real-time. On the other hand, Li

discloses real-time when he discloses real-time market setting in the analysis of securities

price movements (<u>col. 14, line 20 to col. 15, line 10; figs. 19, 3-4, and 6</u>). Li discloses in a

real-time setting, when live fetched data is received by the chart program from the data

vendor via data interface, the chart program needs to recalculate some of the intra-market

elements and update the chart display. Thus, it would have been obvious to one of

ordinary skill in the art to enable a real-time market data for users to see current/live

charting movements of financial market traded instruments as discloses in Li.

Re claims **2, 28, 36, 61, 67,** and **70,** Tertitski teaches entry or exit order is an order

selected from the group consisting of: securities orders, stock orders, option orders, index

orders, commodity orders and futures orders (fig. 2). Tertitski discloses stock orders.

Re claims **3, 29,** and **62,** Tertitski teaches distributed financial computer network is the

Internet (col. 3, lines 11-19). Tertitski discloses the computer is connected to the Internet.

Re claims **4, 26, 37,** and **59,** Tertitski teaches trading strategy is written in a

substantially English language format (front page of patent). The main Inventor is Leonid

Mark Tertitski with assignee as ProxyTrader, Incorporation based in Sunnyvale, California.

Thus, this invention is in English language format.

Re claims **5-6** and **38-39,** Tertitski teaches automatically generating an entry/exit

order upon the occurrence of said at least one market trigger condition (col. 2, lines 6-29;

fig. 2). Tertitski discloses the calculation is performed based on a formula—G in figure 2 for

sell limit or sell stop limit orders (i.e. an entry/exit order).

Re claims **7** and **40,** Tertitski teaches monitoring said market data over said

distributed financial computer network (col. 3, lines 11-19).

Re claims **8** and **41,** Tertitski teaches modifying trading strategy (col. 2, lines 29-46).

Tertitski discloses the step of modifying trading strategy by having the system then

recalculates and redisplays the strategy matrix on a new viewing date. The displayed

strategy matrix changes with the speed of animation.

Re claims **14** and **47**, Tertitski teaches queuing said entry or exit order on an order queue (col. 5, line 42 to col. 6, line 5).

Re claims **16** and **49**, Tertitski teaches checking said order queue for multiple instances of said entry or exit order (col. 3, line 65 to col. 4, line 8). Tertitski discloses that the system checks if the historical prices have already been down loaded into the computer hard drive.

Re claims **18** and **51**, Tertitski teaches identifying at least one conflicting entry or exit order in said order queue; warning a user of said at least one conflicting entry or exit order; and requesting said user to exit said at least one conflicting entry or exit order (col. 5, lines 28-49; figs. 2 and 5).

Re claims **21** and **54**, Tertitski teaches entry or exit order is sent over said distributed financial computer network to be filled by a securities market (fig. 5).

Re claims **22, 32, 55,** and **65**, Tertitski teaches monitoring said entry or exit order over said distributed financial computer network while said entry or exit order is not yet filled; automatically generating warnings that said securities markets have not yet filled said entry or exit order; and automatically generating warnings that said entry or exit order is only partially filled (figs. 2 and 5).

Re claims **23** and **56**, Tertitski teaches monitoring said trading strategy while said entry or exit order is not yet filled; automatically canceling said entry or exit orders based upon the status of said trading strategy; and automatically removing said entry or exit orders based upon the status of said trading strategy (col. 2, lines 6-29; col. 5, lines 28-49; figs. 2 and 5). Tertitski discloses the automatic selection/recommendation of the best strategy.

Re claims **25, 27, 30-31, 33-34, 58, 60, 63-64, 69,** and **72,** Tertitski teaches storing a

data stream of market data from said distributed financial computer network of a given prior

period, said data stream corresponding to market conditions on said distributed financial

computer network over said given prior period and testing a trading strategy using said data

stream over said given prior period, whereby the historical success or failure of said trading

strategy may be analyzed (col. 1, lines20-55; col. 3, lines 20-64; col. 4, lines 9-36).

However, Tertitski does not explicitly teach real-time. On the other hand, Li

discloses real-time when he discloses real-time market setting in the analysis of securities

price movements (col. 14, line 20 to col. 15, line 10; figs. 19, 3-4, and 6). Li discloses in a

real-time setting, when live fetched data is received by the chart program from the data

vendor via data interface, the chart program needs to recalculate some of the intra-market

elements and update the chart display. Thus, it would have been obvious to one of

ordinary skill in the art to enable a real-time market data for users to see current/live

charting movements of financial market traded instruments as discloses in Li.

Re claim **66,** Li teaches displaying means for displaying the results of said testing on a

chart (col. 2, lines 30-65; figs. 3-4). Li clearly discloses different types of charts.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

Jones et al., US 6,021,397

Horrigan et al, US 6,493,682

Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The

examiner can normally be reached on flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone

number for the organization where this application or proceeding is assigned is (571) 273-

8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct-uspto.gov/>. Should you have questions on access to the

Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-

free).

Thu Thao Havan
Art Unit: 3691
12/07/2006